



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA-R03-OAR-2022-0166; FRL-10673-01-R3]

Air Plan Approval; Pennsylvania; Revisions to Plan Approval and Operating Permit Fees Rule and Title V Operating Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve both a state implementation plan (SIP) revision and title V operating permits program revision submitted by the Pennsylvania Department of Environmental Protection (PADEP) on behalf of the Commonwealth of Pennsylvania. The SIP revision pertains to Pennsylvania's existing plan approval and operating permit program fee rules. The revision increases existing plan approval application and operating permit fees. The title V operating permit program revision amends the title V operating permit program fee schedules that fund the Pennsylvania title V operating permit program.

DATES: Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2022-0166 at www.regulations.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or

comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Yongtian He, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 JFK Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2339. Mr. He can also be reached via electronic mail at He.Yongtian@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On July 20, 2021, PADEP submitted a revision to both Pennsylvania's SIP and its title V operating permit program approval codified in 40 CFR part 70 appendix A (relating to approval status of state and local operating permits programs). Additionally, on January 3, 2023, PADEP submitted a letter clarifying which portions of the submittal were intended to be SIP revisions, and which were intended to be revisions to Pennsylvania's title V operating permit program. The submittal consists of revisions amending 25 Pennsylvania (PA) Code Chapters 121 (relating to general provisions) and 127, Subchapters F and I (relating to operating permit requirements; and plan approval and operating permit fees). The revisions increase existing plan approval application and operating permit fees. They also implement new fees for requests for determination, which is a process PADEP conducts when a source requests the PADEP to determine whether certain permitting requirements are applicable to the specific source, or the source is exempt from these requirements. Pennsylvania indicates that these revisions are necessary to ensure that fees are sufficient to cover the costs of administering the plan approval application and operating permit process as required by section 502(b) of the Clean Air Act (42 U.S.C.A. section 7661a(b)) and section 6.3 of the Air Pollution Control Act (35 Pennsylvania

Statute section 4006.3). The documents associated with PADEP submission can be found at <https://www.regulations.gov>, Docket ID No. EPA-R03-OAR-2022-0166.

A. SIP Revision

Section 110(a)(2)(L) of the Clean Air Act (CAA) requires SIPs to include requirements that the owner or operator of each major stationary source pay to the permitting authority, as a condition of any permit required by the CAA, fees sufficient to cover reasonable costs of acting on the permit as well as implementing and enforcing the terms and conditions of the permit.

EPA has previously approved Pennsylvania code Chapter 121 general provisions definitions at 25 PA code 121.1, Chapter 127 public notice requirement in section 127.424, and Pennsylvania's plan approval and operating permit fee regulation at 25 PA Code 127.701, 127.702, 127.703, and 127.707, into the Pennsylvania SIP in accordance with section 110 of the CAA. See 61 FR 39597 (July 30, 1996).

This SIP revision would approve into the Pennsylvania SIP of PADEP's revised regulatory language in 25 PA Code Chapter 121 section 121.1, and Chapter 127 sections 127.424, 127.702, and 127.703, and adds sections 127.465, 127.709 and 127.710. The specifics of the revision are described in Section II.A of this rulemaking.

B. Title V Operating Permit Program Revision

EPA granted full approval of the Pennsylvania title V operating permits program on July 30, 1996. See 61 FR 39597. Under 40 CFR 70.9(a) and (b), an approved state title V operating permit program must require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs and ensure that any fee required under 40 CFR 70.9 is used solely for permit program costs. The fee schedule must result in the collection and retention of revenues sufficient to cover the permit program implementation and oversight costs. CAA 502(b)(3)(A). Pennsylvania's initial title V operating permit emission fee was established in 1994 at 25 PA Code 127.705. See 80 FR 14037 (March 18, 2015). In a February 11, 2014 title V operating permit program revision,

Pennsylvania previously revised 25 PA Code 127.705 to increase annual emission fees for title V sources, noting that annual emissions fees were no longer sufficient to cover costs. See 80 FR 40922 (July 14, 2015).

In the PADEP submission, PADEP indicated that the currently approved fee structure is insufficient to continue to support the title V program, and as a result PADEP has revised Sections 127.704 and 127.705, and has submitted these revisions for EPA action pursuant to CAA 502(d). EPA is considering approving these revisions into Pennsylvania's title V operating permit program. The specifics of the revision are described in Section II.B of this rulemaking.

II. Summary of SIP Revision, Title V Operating Permit Program Revision and EPA Analysis

A. SIP Revision

This revision amends Pennsylvania's SIP by approving PADEP's amendments to 25 PA Code Chapters 121 and 127. PADEP proposed new fees in this revision for the applications of plantwide applicability limits; ambient air impact modeling of certain plan approval applications; risk assessments; and requests for determination (RFD) in order to ensure the continued solvency of its Clean Air Fund.

Specifically, the revision proposes to approve Pennsylvania's SIP submittal that PADEP amended 25 PA Code Chapters 121 and 127, sections 121.1, 127.424, 127.702, and 127.703, and adds sections 127.465, 127.709 and 127.710. PADEP added the definition of "synthetic minor facility" in the definition section 121.1 and corrected a cross-reference error in public notice section 127.424. PADEP amended section 127.702 that establishes plan approval fees, and section 127.703 that establishes Operating permit fees under Subchapter F (State Operating Permit Requirements) for the future years in details based on year and permit categories. The newly added section 127.465 establishes the procedures the owner or operator of a stationary air contamination source or facility shall follow to make a significant modification to an applicable operating permit. New section 127.709 establishes fees for requests for determination, for

whether a plan approval, an operating permit, or both, are needed for the change to the facility.¹ Section 127.710 establishes application fees for the use of general plan approvals and general operating permits for stationary or portable sources.

The revisions to Pennsylvania's SIP satisfy CAA section 110(a)(2)(L), which mandates that SIPs require the owner or operator of each major stationary source to pay to the permitting authority a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit. The revision makes the Pennsylvania SIP more up to date with fee schedules and meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

B. Title V Operating Permit Program Revision

The revision to Pennsylvania's title V program proposes to approve PADEP's submission that amends Chapter 127 sections 127.704 and 127.705. Section 127.704 establishes title V operating permit fees, and section 127.705 require the owner or operator of a title V facility to pay annual title V emission fees.

A key provision of the title V operating permit program is the requirement to establish a financially adequate permit fee schedule that results in the collection and retention of revenues sufficient to cover all reasonable costs required to develop and administer the title V operating permit program as required by 40 CFR 70.9(a) and (b). Title V permit fees are used to implement and enforce the permitting program, including reviewing and processing plan approvals and operating permits, review renewals of existing permits; monitoring facility

¹ Pennsylvania has a merged permit program. A merged permit means there is only one permit for each source; the preconstruction permit (called "plan approval") gets merged into the facility's operating permit (title V) at the end of the shakedown period—typically via an administrative amendment. Every major and minor modification at a title V source requiring a plan approval undergoes public participation since it will modify the source's title V permit; such plan approvals must be "title V ready", i.e., plan approval must meet requirements of both preconstruction permit and title V operating permit.

compliance; taking enforcement actions for noncompliance; performing monitoring, modeling and analysis; tracking facility emissions; conducting inspections, responding to complaints and pursuing enforcement actions, emissions and ambient air monitoring, preparing applicable regulations and guidance, and preparing emission inventories. See 40 CFR 70.9(b).

According to its submission, PADEP has recently experienced a declining in fee revenue due to emissions reductions at major facilities. PADEP has submitted to EPA a detailed economic analysis that justifies its need to increase its title V operating permit fees. See 51 Pa.B. 283 (January 16, 2021), Docket ID No. EPA-R03-OAR-2022-0166. PADEP's economic analysis concluded that Pennsylvania's title V operating permit and annual emission fee revenues collected are no longer sufficient to cover title V operating permit program costs. The state's revision does not increase the title V emission fee under section 127.705. The amendment to section 127.705 clarifies the use of the Consumer Price Index for the prescribed annual increases. PADEP concluded that the fee adjustments in section 127.704 were needed to bring Pennsylvania's title V operating permit program fee revenue in line with expenditures so that the program is self-sustaining as required under the CAA.

Regulations related to the fee schedules for plan approval and operating permit activities were last revised in November 1994, with staged increases occurring over the ensuing 10 years. The last of the staged plan approval and operating permit fee increases occurred in January 2005. PADEP revised the title V annual emission fee under section 127.705 (relating to emission fees) in 2013 and submitted to EPA in 2014, and EPA approved the revision in 2015. See 80 FR 40922 (July 14, 2015). At that time, the PADEP projected that the increased annual emission fee would not be sufficient to maintain the solvency of the title V account in its Clean Air Fund, and noted that a revised annual emission fee or other revised permitting fees would be needed within 3 years.

Pennsylvania indicates that these amendments to its title V operating permit program ensure that fees will remain sufficient to cover the costs of administering the plan approval

application and operating permit process as required by section 502(b) of the CAA and section 6.3 of the Air Pollution Control Act. Without this fee increase and new fees to be collected, Pennsylvania had anticipated funds will not be sufficient to sustain the title V operating permit program. If funds were to become insufficient to sustain the title V operating permit program in Pennsylvania, EPA may determine that Pennsylvania has not taken “significant action to assure adequate administration and enforcement of the Program” and take subsequent required action under 40 CFR 70.10(b) and(c) as well as impose sanctions under the CAA.

Based on the 40 CFR part 70 presumptive minimum fee rate from the September 16, 2021, EPA Office of Air Quality Planning and Standards memorandum,² the requirements of 40 CFR 70.9(b)(2) and the economic analysis by PADEP, EPA finds that the July 20, 2021, PADEP submission has met the requirements of CAA section 502(b)(1)-(10), and is consistent with applicable EPA requirements in title V operating permit program of the CAA and 40 CFR part 70. This rulemaking proposes approval of the increased fees and new fees because the changes meet requirements in 40 CFR 70.9 for sufficient title V fees to cover permit program costs.

III. Proposed Action

EPA is proposing to approve the Pennsylvania July 20, 2021, submittal pertaining to the permitting program fees based on PADEP’s clarification of January 3, 2023 as revisions, described above, to both the Pennsylvania SIP and Pennsylvania’s approved title V operating permit program. The SIP submittal is in accordance with requirements in section 110(a)(2)(L) of the CAA and implement regulations. Additionally, because the title V submittal meets the requirements of CAA sections 502(b)(1) through (10), pursuant to CAA 502(d), EPA is proposing to approve the Pennsylvania title V operating permit program revision submitted on July 20, 2021 and clarified on January 3, 2023. The title V revision meets the requirements in 40 CFR 70.9. EPA is soliciting public comments on both the SIP revision and title V operating

² www.epa.gov/system/files/documents/2022-09/FEE70_2023.pdf

permit program revision discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the Pennsylvania Regulation described in the amendments to 25 PA Code 127, as discussed in section II.A of this rulemaking. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 3 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Under the CAA, the Administrator approves title V operating permit program revisions pursuant to that comply with the Act and applicable Federal Regulations. See 42 U.S.C. 7661a(d). Thus, in reviewing SIP and title V operating permit program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rulemaking does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP revision to Pennsylvania's existing plan approval and operating permit program fee rules is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Lead, Nitrogen dioxide, Operating permits, Ozone, Particulate Matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Adam Ortiz,
Regional Administrator,
Region III.

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